Enclosed are Weyerhaeuser Company's comments on the proposed NPDES Industrial Stormwater General Permit (version dated March 29, 2002). This is an important regulatory permit for the Company. Weyerhaeuser currently has 25 facilities subject to the Industrial Stormwater General Permit. While much of this permit is reasonable and can be expected to produce good environmental outcomes, there are other provisions that are unclear or are not practical. There are several areas where the agency has made discretionary policy choices which are contrary to adopted regulation and will unnecessarily be contentious and costly to deal with.

Our comment format will identify a specific permit section, a statement identifying the "problem," some discussion of the issue, and will generally offer a suggested permit revision.

Comment 1 S1.D.1. – The example in the first bulleted subparagraph to describe a "significant process change" implies the need for extensive data collection.

Discussion – A specific threshold requirement is established; i.e., "add different pollutants to the discharge or increase the amount of pollutants." To make this assessment a facility would logically need to develop comprehensive baseline information on stormwater pollutants before any process change, and then after the change. Is that the type of effort which Ecology intends by this language or is the intent that this be a best professional judgment decision?

The more specific example relating to a facility change which adds a new SIC code activity is easily understood and can be managed against.

Proposed change – Eliminate the first phrase in the first bulleted paragraph. Allow those process changes which lead to a SIC code change to be the "modification" evidencing a "significant process change."

Comment 2 S2.B.3. – Some provision needs to be made for facilities to gain permit coverage where Ecology has determined them to be "Significant Contributors of Pollutants" so that they are not in technical violation of NPDES permitting requirements.

Discussion – This determination would occur for facilities which have considered themselves exempt from the need for permit coverage. CWA liability for on-going unpermitted discharges of stormwaters should not be created with an Ecology "Significant Contributors" determination.

Proposed change – Add language in S1.E. to indicate that a facility subsequently designated as a "significant contributor" has a set number of days to submit an application for coverage under this permit (or maybe through an individual permit). Identify a mechanism (either a declaration in this permit or provision for a compliance order) which protects against a non-compliance status during the time the Significant Contributors determination is announced and Ecology's issuance of permit coverage.

Comment 3 S2.B.3.b. – The definition of "Existing Facilities" is inconsistent with the permit language in S2.B.1. and with the definitions of "New Facility" and "Existing Facility" in Appendix #2 of the permit.

Discussion – It is an incongruous decision to say that only those facilities in operation before November 18, 1995 are existing. This has to be an error.

Proposed change – This permit should recognize that all facilities with coverage under the November 2000 permit are Existing Facilities.

Comment 4 S2.B.5. and S3.E. – Read together, it is not clear if Existing Facilities need to make application to gain a mixing zone.

Discussion – An Existing facility would presumably not need to make an application for coverage under this reissued permit. Yet the language in S3.E. suggests that submittal of an application is necessary to have a mixing zone granted; i.e., "A mixing zone may be requested during application for coverage…".

Proposed change – WAC 173-201A-100(10) presumes that a mixing zone exists for stormwater discharges. There should be no need to specifically "make application" to gain a mixing zone. The two sections of the proposed permit should be clarified to make this clear.

Comment 5 S2.B.5.c. – A definition for "expanded mixing zone" should be provided.

Proposed change – A definition should be added for this term in Appendix #2. The definition should reference WAC 173-201A-100(12) which describes the basis for expanded stormwater mixing zones.

Comment 6 S3.B.1. – The definition of "Process wastewater" offered in this permit is unclear and/or overly broad, and should be adjusted to avoid confusion.

Discussion – Literal use of the permit definition will leave most facilities in the state ineligible for coverage under this general permit. During "manufacturing, processing, operations or maintenance" activities, precipitation which falls on a facility site <u>will come into contact</u> with "raw materials, intermediate products, finished products, byproducts, or waste products." This permit defines this as Process wastewater, and makes the facility ineligible for permit coverage.

Proposed change – A simple clarification would be to adjust the second sentence to say *"Process wastewater* means <u>any non-precipitation water source</u> which, …".

Comment 7 S3.D. (new subsection) –This section should be added to specifically allow certain non-stormwater discharges.

Discussion – Consistent with EPA Multi-Sector General Permit for Industrial Activities (65 FR 64807, October 30, 2000) the following non-stormwater discharges should be explicitly recognized and allowed in this permit:

- Discharge from fire fighting activities
- Fire hydrant flushing
- Potable water, including water line flushing

- Uncontaminated air conditioning or compressor condensate
- Irrigation drainage
- Landscape watering provided all herbicides, and fertilizers have been applied in accordance with manufactures instructions
- Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spill materials have been removed)
- Routine external building wash down which does not use detergents
- Uncontaminated ground water or spring water
- Foundation or footing drains where flows are not contaminated with process materials such as solvents.
- Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of your facility, but not intentional discharges from the cooling tower

Comment 8 S3.D – The preamble paragraph specifically states that compliance with water quality standards is required "at the location named on the State 303(d) list." The 303(d) list is comprised of named waterbodies and is specific to a 640-acre section. The implication is that unnamed tributaries or ditches into the specific 303(d)-listed waterbody would not be burdened with the S3.D. restrictions. Can Ecology please confirm this intention?

Comment 9 S3.D.1 and 2. – The requirement that any facility discharging to a 303(d) listed waterbody must meet the water quality criteria for the named 303(d) pollutant at the point of discharge is not supported by the intent and clear language of WAC 173-201A-060 and –100. These provisions are inconsistent with the Clean Water Act programs for addressing impaired waters. Ecology has discretion to implement a more reasonable approach to address this issue.

<u>Draft permit requirement is inconsistent with Federal Clean Water Act procedures. This inconsistency will have some adverse effect on Washington's economy.</u>

The remedy under the Clean Water Act for waterbodies deemed not to comply with applicable water quality standards is the development of a Total Maximum Daily Load allocation budget. This draft permit effectively preempts this regulatory process. Instead of allowing a science-based and targeted corrective action plan to be developed and implemented, the proposed permitting structure will cause premature actions to cause existing permittees to effectively over-treat stormwater before the TMDL-derived allocation is set. Over-treatment will impose unnecessary incremental costs on this set of permittees. Existing permittees will be in technical "non compliance" with the CWA. The proposed permit will also discourage or effectively prevent new or expanded activities. Together, these discretionary choices by the agency will have some dampening effect on Washington's economy. They will not make Washington more competitive in attracting and retaining business.

There is no existing legal requirement for demanding compliance at the point of discharge

The Northwest Pulp and Paper Association has commented on the lack of any legal requirement for compelling compliance with water quality criteria at the point of discharge in 303(d) listed waterbodies. Weyerhaeuser supports the comments made on this point by the NWPPA.

Draft permit is not supported by WAC 173-201A-100(10)

The language of WAC 173-201A-100(10) directly addresses the applicability of mixing zones for stormwater discharges. This wording of this section presumes that a mixing zone will be granted to stormwater dischargers. The only limitations to the granting of a mixing zone are presented in WAC 173-201A-100(10)(b). None of these limitations address the characteristics or attainment status (for water quality standards) of the receiving water.

Draft permit is not supported by WAC 173-201A-060 and -100

Ecology has recently developed guidance for its Permit Writers Manual which effectively would prohibit the authorization of a mixing zone for an NPDES permittee discharging a pollutant for which the receiving water is listing on the states 303(d) list. Ecology's guidance is flawed on two points. First, it is inconsistent with WAC 173-201A-100, WAC 173-201A-060(5) and (6), and with the agency's own history of NPDES permitting based on these sections. Second, the Permit Writers Manual is guidance, it is not adopted regulation. Agency guidance does not trump rather clear adopted regulation. Ecology must honor adopted state regulation and provide a mixing zone for stormwater discharges.

Draft Permit is internally inconsistent with Ecology's Water Quality Program policy positions. Adverse impacts from the implementation of this proposed permit will occur due to erroneous mis-labeling of waterbodies.

Program guidance, to be announced in the Permit Writers Manual, will acknowledge that a 303(d) listing does not presume that water quality in a waterbody is really impaired. This is tacit recognition that the quantity and quality of data, and the decision criteria for determining "impairment," may not have been comprehensive enough to make important 303(d) labeling decisions. Re-worked listing criteria to be used for preparation of the 2003 list will presumably yield greater confidence in the true status of a waterbody. In the interim, however, existing and prospective new permittees will incur adverse outcomes from implementation of the proposed permit.

Proposed change – Sections S3.D., S3.E., and S4.D., of the permit should be re-drafted to allow for mixing zones in all waterbodies consistent with the clear language of WAC 173-201A-100(10).

Comment 10 S3.E.2. – The allowed mixing zone dimensions do not literally conform to the delineation process specified in WAC 173-201A-100(10) *Storm Water*. The "design storm" is not explicitly identified in this permit.

Discussion – The suggested changes add clarity and conform the permit to specific state regulation language.

Proposed changes - There are three suggested changes to the permit.

First, Ecology should specifically identify the "design storm." For Western Washington, a "24-hour storm with a 6 month return frequency" should be designated as the design storm. This could be added as a new subparagraph E.4.

Second, subparagraph E.2.a. should be expanded to read,

"a. Streams, rivers, <u>natural or constructed</u> <u>stormwater conveyance systems</u>:" This change will simply recognize that stormwater discharges into the smallest of receiving waterbodies will be allowed a default mixing zone.

Third, subparagraph E.3. should be reworded to say,

"3. An applicant/permittee may request a "non-standard" mixing zone size based on a volume of stormwater runoff corresponding to the design storm specified in this permit, or an expanded mixing zone size due to precipitation events greater than the design storm specified in this permit. In each case the applicant/permittee must clearly demonstrate the requested mixing zone complies with the requirements of WAC 173-201A-100 (10) *Storm water*."

Comment 11 S3.F. The proposed General Prohibitions permit language is too absolute and cannot reasonably be complied with.

Discussion - The requirement to "prevent" any oil sheen or floating materials is simply too stringent and unequivocal. To some extent, these would require subjective assessments on whether a sheen is from a petroleum source or is a natural vegetation degradation product, or whether floating leaves, needles, bark, soil, etc., constitute regulatory non-compliance with S3.F. This permit identifies Benchmark Values for "Petroleum – Oil and Grease" and "Turbidity." These objective measures of BMP performance are superior to the simplistic General Prohibitions language.

Proposed changes - Delete the General Prohibitions language in S3.F.

Comment 12 S4. – A number of the specifications in this Monitoring Requirements section are overly burdensome and expensive, or as a practical matter, unfeasible.

Discussion – This permit section should be softened to articulate sampling goals and objectives, and be less prescriptive. There are many site-specific factors which may make literal compliance with the proposed requirements extremely difficult, and out of balance with the practical and regulatory value of the resulting data.

Suggested changes – These changes should be worked into the permit language:

Preamble – The sampling instructions sentence should be modified to read, "The Permittee is not required to sample <u>at night</u> but should make an effort …". For many manufacturing facilities "regular business hours" is 24 hours/7 days per week. Sampling at night would add significant safety risk.

Paragraph 1. – Change to read, "All samples will be taken as close to the point of discharge as reasonably practical <u>and consistent with good safety practices</u>…"

Paragraph 3. – The requirement to both sample within the "first hour of discharge" and to meet a "0.1 inches of rain in a 24-hour period" sized event could be very difficult and expensive. Most facilities with multiple discharges will need to rely upon environmental consultants to accomplish the sample collection. A number of Weyerhaeuser facilities have 12-15 discharge points. This implies that 8-10 people will be required to accomplish the permit directive. The cost of mobilizing a consultant team to a remote site for a sampling event will be at least half the cost. It may not be possible to accurately anticipate and meet these literal requirements when the consultant team is traveling from an urban center to a rural location. A longer allowed sampling window would be more reasonable.

Paragraph 4. – For areas with high seasonal ground water or allowed "non-stormwater, non-process water" discharges there may never be a period of "no discharge." The trigger for sampling would better be expressed as "preceded by at least 24-hours of no precipitation."

Paragraph 5. – The allowance to group similar discharge points based on common upland activities or site conditions is appropriate. Differences in "discharge volumes" should not disqualify the opportunity to group comparable discharge points. Discharge volumes are determined by size of drainage area and amount of impervious surface area. This is benign. The evaluation for grouping similar discharge points should focus on the "activity." The permit should simply require an analysis to be provided in the SWPPP explaining the reasoning for the selection of discharge points for sampling.

Paragraph 5. – Language should be added which explicitly excludes from the need for S4. Monitoring, those stormwater discharges from office buildings and/or administrative parking

lots not requiring coverage per S1.B.4. As currently worded, discharges from these parking lots that are part of a larger industrial/commercial complex that does require permit coverage and monitoring, would not be excluded.

S4.A – It is not at all clear what is meant by the directive that "Test methods are the minimum level required." This should be clarified and re-worded.

S4.A. – This section fails to address the situation where stormwater pollutants from facilities, activities, or land uses up-gradient from the permitted facility are impacting stormwater quality. What are Ecology's expectations and guidance on how a facility should sort out these background contributions?

S4.A.1. – The directive that visual monitoring be used to determine that "controls" are "adequate" entails the need for subjective judgments. The mere observation of an "odor" or "discoloration" or "turbidity" does not imply that there is a problem which needs to be addressed. An assessment against Benchmark Values and, ultimately, an empirical assessment of stormwater impacts at the edge of a authorized mixing zone, will determine whether the BMPs are adequate.

S4.A.1. – A requirement to visually inspect for "suspended solids" and "oil and grease" is not possible. By definition these pollutants are in the water column, and cannot be evaluated by visual observation. Observation for visible sheen and turbidity would provide some information.

S4.A.1. – The last sentence in the second paragraph judges that all non-stormwater discharges are "illicit." Referring to Comment 7 above, the implication is that Ecology will be willing to write individual NPDES permits for each of those "non-stormwater/non process waters" discharges. This would not be a good use of limited agency permitting resources.

Comment 13 S4.B.1. - It is acceptable that the additional monitoring parameter for "Timber Products Industry, Paper and Allied Products" be Biological Oxygen Demand. The Benchmark value should be much higher.

Discussion – A BOD5 value of 30 mg/l is equal to the performance from a standard secondary treatment process. A stormwater sample collected in the initial hour of a significant storm event at a wood products facility can be expected to have an elevated BOD5 concentration, then to fall off with time and flow volume. A value of 100 mg/l would be a better indicator of BMP performance and opportunity.

Proposed change – Substitute a value of 100 mg/l BOD5 as the appropriate Benchmark value.

Comment 14 S7.A. and B. These sections need to be adjusted consistent with the discussion presented in Comment 9.

Comment 15 S7.A. The second sentence should either be eliminated or faithfully track with the provisions of WAC 173-201A-100(10) and our suggested revision to S3.D. This could be accomplished by changing this sentence to read, "Compliance with surface water quality standards shall be determined in a manner consistent with WAC 173-201A."

Comment 16 S7.B. Are enclosed culverts and/or pipes considered "waters of the state?" Are constructed wetlands, or stormwater treatment and conveyance systems? The permit should clarify where the point of compliance is for stormwater discharges to these types of non-traditional waterbodies, and whether their location on or off the facility property, or ownership status (public or private) makes any difference. A typical example to illustrate this question would be where facility stormwater drops into a constructed and enclosed municipal subsurface conveyance system; i.e., a pipe, and where that conveyance does not "daylight" for some distance. Where is the point of compliance and why?

Comment 17 S7.C. – This permit should simply specify the "water quality design storm or the water quality design flow rate" and eliminate the reference to the "applicable stormwater management manual identified in Special Condition S9.5." (note: the reference apparently should be S9.A.5.) The "24-hour storm with a 6 month return frequency" should be specified in this permit as the design storm for Western Washington.

Discussion – WAC 173-201A-100(10) explicitly identifies that Ecology will approve a "design storm." With the consideration of site specific factors, this design storm can be translated to a quantity of stormwater runoff. This stormwater quantity can then be used in design considerations for BMPs.

Proposed change - The "24-hour storm with a 6 month return frequency" should be specified in this permit as the design storm for Western Washington.

Comment 18 S8 – The intentions of the permit directive in the preamble to the section which "…requires the operation of back-up or auxiliary facilities or similar systems…" is not clear.

Discussion – The implication is that redundant structural source control or treatment BMPs might be expected and required. Ecology's intentions need to be clearly articulated.

Proposed change – Either eliminate the sentence in the preamble beginning with, "This provision requires the operation of back-up or auxiliary facilities or similar systems,…" or provide very specific direction on the types and situations when duplicative "auxiliary facilities or similar systems" need to be provided.

Comment 19 S8.A. – There should be explicit recognition that stormwater flow quantities in excess of the "design storm" may be bypassed around BMP treatment systems.

Discussion – BMP treatment structure bypass of stormwaters arising from precipitation events greater than the design storm will necessarily occur. Without physical bypass provision the risk is that BMP systems will be rendered inefficient or that the treatment structures will be physically damaged. The environmental impact of the stormwater discharge from a "greater than design storm" bypass is expected to be minimal. Pollutant concentrations in the bypass stormwater should be extremely dilute and the receiving waterbody can be expected to have much assimilative capacity.

Proposed change – Add a new subparagraph S8.A.4. which says:

"4. Bypass which is directly related to stormwater quantities arising from precipitation events greater than the approved design storm.

This bypass of treatment BMP's is authorized. The permittee has no obligation to notify the Department of these events, but will keep a record of the occasions when a bypass attributable to this cause is observed."

Comment 20 S9.A.4.a. – What is the form of the "notice" Ecology could issue to a permittee? Is it a regulatory order, or simply a letter providing technical assistance and recommendations?

Discussion – Technical assistance by Ecology personnel is appropriate. A sharing of "best practices" from facility to facility would be appreciated. The agency also has authority to issue a regulatory order to compel actions to ensure compliance with Washington state law.

Proposed change – Clarify what the legal status of the "notice" will be. Label the regulatory action an "Administrative Order" if, in fact, Ecology's intentions are to make the action mandatory.

Comment 21 S9.A.4.c. – Unless the situation is truly egregious, the use of visual monitoring to determine the actual discharge of a significant amount of a pollutant amounts to a subjective judgment. It is not clear how visual monitoring could be used to determine the "potential to discharge a significant amount of any pollutant."

Discussion – This permit needs to offer clear direction on the regulatory triggers which require follow-up actions. The language in the draft permit relating to visual monitoring is too ambiguous to yield consistent and confident determinations on a "significant amount of any pollutant."

Proposed change - Eliminate the last sentence in paragraph S9.A.4.c.

Comment 22 S9.A.5.a. and b. - The Stormwater Management Manual for Western Washington is a comprehensive technical assistance document. While there was significant public involvement in the development of the manual, Ecology made no effort to adopt it as a regulation through procedures specified in the Administrative Procedures Act. Ecology should not attempt to bootstrap use of the Manual into becoming a minimum and mandatory regulatory requirement.

Discussion – The use of the mandatory "shall" language for the manual should be replaced with language indicating it is a technical support guidance document from which permittees could self-select the BMPs necessary to accomplish good performance.

Comment 23 S9.B.3. – It is not clear what regulatory authority Ecology is relying on to direct that "peak flow" be regulated. How is "peak flow" defined? What would it mean to regulate "peak flow?"

Discussion – The NPDES permit program regulates the discharge of pollutants. Ecology should reconcile this proposed requirement for control of "peak flow" with the definition of "pollutant" appearing in Appendix #2 of this permit. Also, the agency should better define what it means to regulate peak flow.

Comment 23 General Conditions G3 – The directive in this condition is relevant for facilities generating process waters. Unless Ecology can explain its applicability to stormwater discharges, it should be removed.

Comment 24 Appendix #2 Definitions –

The "Design Storm" should be defined as a "24 hour storm with a 6 month return frequency."

The "Discharge Target" is a useful concept and the pollutants and values suggested are reasonable. However, the term does not appear anywhere in the body of the permit. The permit should offer some explanation of the intention for these Discharge Target(s) and contrast that with the Benchmark Values concept used in the permit.

Thank you for the opportunity to offer these comments.